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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1971

No. .....

CARMINE G. DE SAPIO,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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APPENDIX A

Opinion of the Court of Appeals
(November 16, 1970)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 158—September Term, 1970.

(Argued September 18, 1970 Decided November 16, 1970.)

Docket No. 34689

UNITED STATES OF AMERICA,

Appellee,

—v.—

CARMINE G. DESAPIO,

Defendant-Appellant.

Before:

FRIENDLY, SMITH and HAYS,

Circuit Judges.

Appeal from a judgment of the District Court for the Southern District of New York, Harold R. Tyler, Jr., *Judge,* convicting Carmine DeSapio, after a verdict, of conspiring to violate 18 U.S.C. §§1951 and 1952 and of two substantive violations of 18 U.S.C. 1952, and from an order denying a new trial. Affirmed.

MAURICE EDELBAUM, Esq. (Edelbaum, Abrams, Feitell & Edelbaum, New York, New York, Lawrence K. Feitell, Esq. and Henry J. Boitel, Esq., of Counsel), *for Defendant-Appellant.*

JACK KAPLAN, Assistant United States Attorney (Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, Arthur A. Ministeri, James Schreiber and Robert G. Morvillo, Assistant United States Attorneys, of Counsel), *for Appellee.*

FRIENDLY, *Circuit Judge*:

In December 1968 a grand jury in the District Court for the Southern District of New York returned an indictment against Carmine DeSapio, Antonio Corallo, and Henry Fried. The latter's case was severed because of illness. After a four-and-a-half week trial, Corallo was convicted on one of the three counts charged in the indictment and acquitted on another, and the third count was dismissed as to him; he has not appealed.[1] Appellant DeSapio was convicted on one count of conspiring to violate 18 U.S.C. §1951, which prohibits the obstruction of commerce by extortion, and 18 U.S.C. §1952, which prohibits travel in interstate or foreign commerce or utilization of any facility in such commerce to commit bribery, and of two substantive violations of the latter section. More intelligibly stated, the charge was that DeSapio conspired with Fried and others to bribe James Marcus, then Commissioner of the New York City Department of Water Supply, Gas and Electricity to withhold permits sought by Consolidated Edison Company of New York, Inc. (Con Ed) until Con Ed would agree to award construction contracts to Fried's companies. DeSapio was sentenced to a term of two years

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1 Corallo was given a 4½ year prison sentence, the term to run concurrently with the three-year sentence imposed on a previous conviction which was sustained in *United States* v. *Corallo*, 413 F.2d 1306 (2 Cir.), *cert. denied*, 396 U.S. 958 (1969).

imprisonment on each count concurrently and to fines of $1,500 on each of the three counts.

I.

A summary of the evidence is needed to understand DeSapio's legal contentions. In the interest of keeping this opinion to manageable size, we shall endeavor to limit ourselves to the essentials, although in doing so we necessarily omit much evidence which one side or the other would doubtless deem significant.

The story constitutes a second act in the drama involving Commissioner Marcus and Herbert Itkin, who combined the roles of underworld character and FBI informer, of which *United States* v. *Corallo, supra,* 413 F.2d 1306, was the first. The evidence in that case depicted how Marcus, hard-pressed by loan sharks, had agreed with Corallo, Itkin, and Daniel Motto to award a contract for the renovation of a reservoir in Jerome Park in the Bronx to a construction company headed by Fried without competitive bidding, in return for Fried's promise to kick back 5% of the price. This success led Corallo, Marcus, and Itkin to agree that similar arrangements should be placed in operation elsewhere. Corallo mentioned that Con Ed was a prime target since it was constantly making contracts and also was requiring permits from the Water Department to dig in city streets. Not long after this, but in ignorance of what had been planned, Con Ed requested Water Department approval of a project to reconstruct and enlarge a power transmission facility known as the "high line," 20 miles of which ran atop the Catskill Aqueduct on a City owned right-of-way in Westchester County.

The first approach to Con Ed was made by Milton Lipkins, vice president of Broadway Maintenance Corpo-